



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 14 July 2021 which reads as follows:

“G.R. No. 252329 – (People of the Philippines v. Sharon Magpantay y Ogbac and Dennis Tobias y Cabugao, a.k.a. “Den”). — Assailed in this ordinary appeal¹ is the Decision² dated June 13, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10511, which affirmed the Joint Decision³ dated November 17, 2017 of the Regional Trial Court (RTC) of Batangas City, Branch 84, in Criminal Case No. 21439, which convicted accused-appellants Sharon Magpantay y Ogbac (Sharon) and Dennis Tobias y Cabugao (Dennis) of **Illegal Sale of Dangerous Drugs** under Section 5, Article II of Republic Act (RA) No. 9165;⁴ and Criminal Case No. 21440, which convicted Dennis of **Illegal Possession of Dangerous Drugs** under Section 11, Article II of the same law.

ANTECEDENTS

Sharon and Dennis were charged with Illegal Sale of *shabu* in Criminal Case No. 21439, while only Dennis was charged with Illegal Possession of *shabu* in Criminal Case No. 21440 as follows:

[Criminal Case No. 21439]

That on or about July 18, 2016 at around 5:40 in the afternoon at Brgy. Sta. Clara, Batangas City, Philippines and within the jurisdiction of

¹ See Notice of Appeal, *Rollo*, pp. 13-14; CA *rollo*, pp. 123-125.

² *Rollo*, pp. 3-12. Penned by Associate Justice Danton Q. Bueser, with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Rafael Antonio M. Santos.

³ CA *rollo*, pp. 60-64 dorsal portion. Penned by Presiding Judge Dorcas P. Ferriols-Perez.

⁴ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED. PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.” approved on June 7, 2002

this Honorable Court, the above-named accused, conspiring and confederating together, not being authorized by law, did then and there willfully, unlawfully[,] and criminally sell or dispense one heat-sealed transparent plastic sachet containing 0.18 gram of Methamphetamine Hydrochloride, more commonly known as [shabu], a dangerous drug, which is a clear violation of the above-cited law.

CONTRARY TO LAW.

[Criminal Case No. 21440]

That on or about July 18, 2016 at around 5:40 in the afternoon at Brgy. Sta. Clara, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully[,] and criminally possess or have under his custody and control three (3) heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride, more commonly known as [shabu], a dangerous drug, with an aggregate weight of 1.39 grams, which is a clear violation of the above-cited law.

CONTRARY TO LAW.⁵

PO1 Darius D. Aguiron (PO1 Aguiron) testified that, on July 18, 2016, he received a tip from a confidential informant about Sharon's illegal drug activities in Sta. Clara, Batangas City. Upon relaying the information to Chief Intel Police Officer Joel Laraya, a buy-bust team was formed, in coordination with the Philippine Drug Enforcement Agency. During the briefing, PO1 Aguiron was designated as the poseur-buyer and a ₱500.00-bill was marked with his initials "DDA." Thereafter, the team proceeded to a vacant lot near the suspect's house at Villa Anita in Sta. Clara, Batangas City. PO1 Aguiron and the confidential informant walked towards Sharon's house, while the rest of the team remained inside the vehicle. Sharon and Dennis approached PO1 Aguiron and the confidential informant. Upon recognizing the suspects, the confidential informant signaled PO1 Aguiron to proceed with the purchase. PO1 Aguiron then handed the marked ₱500.00-bill to Dennis, who in turn instructed Sharon to give the drugs to PO1 Aguiron. Sharon took out one heat-sealed transparent plastic sachet containing white crystalline substance from her left pocket and handed it to PO1 Aguiron. After examining the content of the plastic sachet, PO1 Aguiron introduced himself as a police officer, while the rest of the team immediately assisted in the arrest of the suspects.⁶

Upon arrest, PO1 Aguiron frisked Sharon and Dennis. He recovered a black pouch containing three (3) more heat-sealed plastic sachets containing white crystalline substance; one ₱500.00-bill; and two ₱100.00-bills from Dennis. Immediately then, at the place of arrest and in the presence of Sharon, Dennis, and the other police officers, PO1 Aguiron marked all the seized items. Photographs were also taken during the marking. Thereafter, the seized items remained in the custody of PO1 Aguiron when the team, together with Dennis and Sharon, proceeded to the police station, where the

⁵ CA *rollo*, pp. 60-60 dorsal portion.

⁶ Id. at 60 dorsal portion-61.

the police station, where the inventory was conducted in the presence of Dennis and Sharon, Councilor Virgilio Cunag, and Department of Justice (DOJ) representative Rodel Espina, who all signed the Certificate of Inventory. It was also PO1 Aguiron who brought the seized items for examination to the crime laboratory, where duty receiving officer and evidence custodian PO2 Joel Barcelona (PO2 Barcelona) received the items, and then turned them over to PSI Herminia Llacuna (PSI Llacuna) for examination. Per PSI Llacuna's report, the examined items yielded positive for *shabu*. After examination, PSI Llacuna placed the items in a big transparent sachet, which she sealed, marked, and signed, and then returned to PO2 Barcelona for safekeeping. It was PO2 Barcelona who retrieved the evidence and brought them to the Court. The corroborating testimonies of PO2 Barcelona and PSI Llacuna, among others, were stipulated upon by the parties and dispensed with.⁷

In defense, Sharon and Dennis denied the charges against them and offered a different version of the events surrounding their arrest. They averred that on the day of the arrest, they were home having a meal with Sharon's children when two unidentified men forcibly entered and searched their house. Nothing was found, but Sharon and Dennis were brought outside and photographed with sachets of *shabu*, which they placed on Dennis' waist. Afterward, they were brought to the police station and forced to admit ownership of the *shabu*.⁸

RTC RULING

In its Joint Decision⁹ dated November 17, 2017, the RTC found Sharon and Dennis guilty beyond reasonable doubt of the charges as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding [**accused**] **SHARON MAGPANTAY y Ogbac** and **accused DENNIS TOBIAS y Cabugao @ "Den"** **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of RA No. 9165 (sale of dangerous drugs) and they are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to each pay a fine of **FIVE HUNDRED THOUSAND PESOS ([P]500,000.00) for Criminal Case No. 21439**. **Accused DENNIS TOBIAS y Cabugao @ "Den"** is likewise found **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA No. 9165 (possession of dangerous drugs) and is hereby sentenced to suffer the indeterminate penalty of imprisonment of **TWELVE (12) YEARS AND ONE (1) DAY as minimum to THIRTEEN (13) YEARS as maximum** and to pay a **FINE of THREE HUNDRED THOUSAND PESOS ([P]300,000.00) for Criminal Case No. 21440**.

x x x¹⁰

SO ORDERED. (Emphases in the original.)

⁷ Id. at 62-62 dorsal portion.

⁸ Id. at 62 dorsal portion-62.

⁹ Id. at 60-64 dorsal portion.

¹⁰ Id. at 64 dorsal portion.

Aggrieved, both accused appealed to the CA.

CA RULING

In a Decision¹¹ dated June 13, 2019, the CA affirmed the RTC ruling. It held that the prosecution was able to establish beyond reasonable doubt all the elements of the offenses charged. As well, the integrity and evidentiary value of the *corpus delicti* was proven to have been preserved as an unbroken chain of custody was duly established. The CA disposed:

FOR THESE REASONS, the appeal is **DENIED**. The Decision dated November 17, 2017 of the Regional Trial Court (RTC) of Batangas City, Branch 84, in Criminal Case Nos. 21439 and 21440 is **AFFIRMED**.

SO ORDERED.¹² (Emphases in the original.)

Hence, this appeal, seeking the reversal of the convictions. Both the People, through the Office of the Solicitor General, as well as Sharon and Dennis, manifested that they are adopting their respective Briefs filed before the CA in lieu of the filing of a supplemental brief.¹³

RULING

The appeal lacks merit.

Conviction for violation of Section 5, Article II of RA No. 9165, entails proof of the following elements beyond reasonable doubt: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. On the other hand, a conviction for violation of Section 11, Article II of RA No. 9165, requires proof beyond reasonable doubt of the following elements: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law, and; (c) the accused freely and consciously possessed the said drug.¹⁴ The dangerous drug constitutes the very *corpus delicti* of these drug offenses; hence, it is crucial to establish with moral certainty its identity and integrity. In this regard, the burden is upon the prosecution to prove beyond reasonable doubt that the illegal drug presented in court is the same drug seized from the accused. This stringent burden is engendered by the unique characteristic of narcotic substances that renders them indistinct, not readily identifiable, and usually open to tampering, alteration, or substitution either by accident or by deliberate act, especially when seized in small quantity.¹⁵

Thus, RA No. 9165, and its implementing rules and regulations, along with the developments in our case laws, outlined a definitive and mandatory

¹¹ *Supra* note 2.

¹² *Id.* at 11.

¹³ *Id.* at 22-27 and 28-32.

¹⁴ *People v. Dela Cruz*, G.R. No. 238212, January 27, 2020.

¹⁵ *Mallillin v. People*, 576 Phil. 576, 586-588 (2008).

procedure in handling a confiscated drug to preserve its integrity and evidentiary value. This is the so-called chain of custody, which is defined as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction."¹⁶ In *People v. Hementiza*,¹⁷ the Court synthesized the four essential links in the chain of custody of the confiscated items to be established as follows:

- (1) The seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer;
- (2) the turnover of the dangerous drug seized by the apprehending officer to the investigating officer;
- (3) the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and
- (4) the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.¹⁸

In the oft-cited case of *People v. Sanchez*,¹⁹ we emphasized that marking is the first and most crucial step in the custodial link as it initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the law enforcement officers from harassment suits grounded upon allegations of evidence planting. Proper marking is necessary to separate one evidence from the other, making each of them distinct to prevent switching, planting, or contamination. It is important, therefore, that the seized item be immediately marked upon confiscation in the presence of the violator because the succeeding handlers of the specimen will use the markings as reference.²⁰ To be specific, the chain of custody rule requires that the marking of the seized items be done immediately after the arrest and seizure, and only if there are justifiable reasons may it be done at the nearest police station or at the nearest office of the apprehending team.²¹ Section 21 of RA No. 9165, as amended by RA No. 10640,²² then requires that the officer taking initial custody of the drug shall, immediately after seizure and confiscation, conduct the physical inventory and take a photograph of the seized items in the presence of the accused or

¹⁶ *People v. Nuarin*, 764 Phil. 550, 557 (2015).

¹⁷ 807 Phil. 1017, 1030 (2017).

¹⁸ *Id.*

¹⁹ 590 Phil. 214, 241 (2008).

²⁰ *People v. Nuarin*, *supra* note 16, at 558-560; See also *People v. Omamos*, G.R. No. 223036, July 10, 2019; *People v. Ramirez*, 823 Phil. 1215, 1225 (2018).

²¹ *People v. Suarez*, G.R. No. 249990, July 8, 2020.

²² Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF [RA] NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA No. 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; World News section, p. 6). Thus, RA No. 10640 appears to have become effective on August 7, 2014.

representative or counsel, with an elected public official **and** a representative of the National Prosecution Service of the DOJ **or** the media who shall be required to sign the copies of the inventory and be given a copy thereof.²³ The rule further provides that, in case of warrantless seizure like in this case, the physical inventory and photograph shall be conducted at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. Strict compliance with these procedural safeguards is imperative to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.²⁴

In this case, we find no reason to deviate from the factual findings and conclusions of the RTC, as affirmed by the CA, since the records clearly show that Sharon and Dennis were caught *in flagrante delicto* selling *shabu* to PO1 Aguiron during a legitimate buy-bust operation.²⁵ The pieces of evidence on record support the court *a quo*'s findings that Dennis was in free and conscious possession of more sachets of *shabu* without being authorized by law.²⁶ We note that there is no allegation in this appeal, much less proof, that the RTC and the CA overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case.

As well, the RTC and the CA correctly found that the prosecution was able to establish an unbroken chain of custody beyond reasonable doubt, and was able to account for every link in the handling of the seized items from the moment of their seizure up to their presentation in court as evidence. The irrefutable pieces of evidence that the prosecution presented show that immediately after PO1 Aguiron seized the items and arrested Sharon and Dennis, he marked the confiscated items at the place of seizure and arrest in the presence of the suspects and the rest of the assisting police officers. The required taking of photograph was also done. Notably, the marked and photographed seized items remained in PO1 Aguiron's custody during transit to the police station, where the physical inventory, which was done in the presence of Sharon and Dennis, a local official, and a DOJ representative, in conformity with the amended witness requirement under RA No. 10640. Thereafter, it was also PO1 Aguiron who personally delivered the items and the request for examination to the crime laboratory. The items were received by PO2 Barcelona and then were immediately turned over to PSI Llacuna, who conducted the examination. After examination, which yielded a positive drug content, PSI Llacuna placed all the items in a transparent bag. She sealed, marked, and signed the bag to ensure that the identity of the seized items inside is not compromised before returning them to PO2 Barcelona for safekeeping. Finally, it was PO2 Barcelona, the evidence custodian, who retrieved the items and presented them in court as evidence. These custodial links were duly recorded in the Chain of Custody Form.²⁷ Indubitably, the Court sustains the RTC and the CA in holding that there is sufficient

²³ The offenses in this case were committed on July 18, 2016 or after the effectivity of RA No. 10640.

²⁴ *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

²⁵ *CA rollo*, p. 63 dorsal portion.

²⁶ *Id.*

²⁷ *CA rollo*, p. 64.

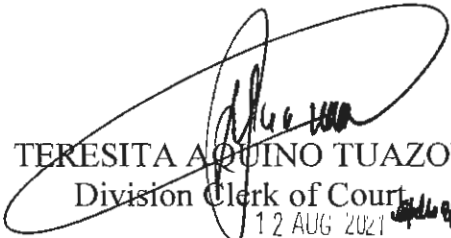
compliance with the chain of custody rule, and thus, the integrity and evidentiary value of the *corpus delicti* has been preserved.

The allegations of inconsistencies in the testimony of PO1 Aguiron – seven to ten meters discrepancy in the target area and the place where the arrest was conducted; and only Sharon was targeted but apparently, she was accompanied by Dennis during the sale – are trivial matters which are not pertinent to the establishment of the elements of the offenses being prosecuted, much less, detract the credibility of PO1 Aguiron and his testimony. It is settled that “[i]nconsistencies in the testimonies of prosecution witnesses in cases involving violations of [RA No. 9165] may be excused so long as the identity of the dangerous drugs is proved beyond reasonable doubt and the chain of custody is established with moral certainty.”²⁸ Consequently, the adjudged convictions must stand.

FOR THESE REASONS, the appeal is **DISMISSED**. The assailed Decision dated June 13, 2019 of the Court of Appeals is **AFFIRMED**. Accordingly, (a) in Criminal Case No. 21439, Sharon Magpantay y Ogbac and Dennis Tobias y Cabugao a.k.a. “Den” are found **GUILTY** beyond reasonable doubt of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. 9165, and are each sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and (b) in Criminal Case No. 21440, Dennis Tobias y Cabugao a.k.a. “Den” is found guilty of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of Republic Act No. 9165, and is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum, and to pay a fine of ₱300,000.00.

SO ORDERED.” (Lopez, J. Y., J., designated additional member *per* Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
12 AUG 2021

²⁸ *People v. Dimaano*, 780 Phil. 586, 591 (2016).

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THE DIRECTOR (reg)
Bureau of Corrections
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 84
Batangas City
(Crim. Case Nos. 21439 & 21440)

SHARON MAGPANTAY y OGBAC (reg)
Accused-Appellant
c/o The Superintendent
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THE SUPERINTENDENT (reg)
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